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Who Acts as Guardian Judge when Head of KUA is Woman? The Reconstruction of Authority Delegation in Marriage Law

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Abstract
The issue of the judicial guardian becomes complex when the Head of the Office of Religious Affairs (KUA) may come from a different functional position and is simultaneously held by an Indonesian woman. Ambiguity arises because the position of Head of the KUA, the status of the Penghulu, fiqh requirements, and the sources of administrative authority do not always align under Indonesian law. This study analyses the construction of the wali hakim's authority and formulates a model that integrates fiqh legitimacy, administrative legality, and legal certainty under Indonesian law. The study employs a normative legal method with a normative approach to regulations and literature to examine the structure of the wali hakim's authority in Indonesia. Data sources comprised regulations, academic articles and relevant literature, collected through systematic documentation techniques for the purposes of analysis. Data analysis followed the methodology of Miles and colleagues through data condensation, data presentation and the gradual drawing of conclusions based on the study's normative findings. The findings indicate that the Head of the KUA is not always synonymous with a judicial guardian, as the status of the Penghulu and the configuration of the post determine the scope of such authority. When the Head of the KUA is not a Penghulu, the appropriate mechanism is the administrative appointment of a Penghulu, rather than a delegation or mandate from the Head of the KUA to an official. This study proposes an institutional-functional authority model that integrates fiqh legitimacy, administrative competence, official qualifications, documentation and legal certainty within a single structure. Further research should empirically test this model across different KUA offices to assess the consistency of its application and variations in interpretation amongst Indonesian officials.

Info Artikel
Kata Kunci: Wali Hakim; Kepala KUA Perempuan; Rekonstruksi Delegasi

Abstrak
Persoalan wali hakim menjadi kompleks ketika Kepala KUA dapat berasal dari jabatan fungsional berbeda dan sekaligus d*ijab*at oleh perempuan Indonesia. Ketidakjelasan muncul karena jabatan Kepala KUA, status Penghulu, persyaratan fikih, dan sumber kewenangan

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Kewenangan; Hukum Perkawinan Islam Indonesia

administratif tidak selalu berimpit dalam hukum Indonesia. Penelitian ini menganalisis konstruksi kewenangan wali hakim dan merumuskan model yang mengintegrasikan legitimasi fikih, legalitas administratif, serta kepastian hukum Indonesia. Penelitian menggunakan metode yuridis normatif dengan pendekatan normatif terhadap peraturan dan literatur untuk menelaah struktur kewenangan wali hakim di Indonesia. Sumber data berasal dari peraturan, artikel ilmiah, dan pustaka relevan, yang dikumpulkan melalui teknik dokumentasi secara sistematis untuk kepentingan analisis. Analisis data mengikuti Miles dan kolega melalui kondensasi data, penyajian data, serta penarikan kesimpulan secara bertahap berdasarkan temuan normatif penelitian. Temuan menunjukkan Kepala KUA tidak selalu identik dengan wali hakim karena status Penghulu dan konfigurasi jabatan menentukan kompetensi kewenangan tersebut. Ketika Kepala KUA bukan Penghulu, mekanisme tepat ialah penunjukan administratif Penghulu, bukan delegasi atau mandat dari Kepala KUA kepada pejabat. Penelitian menawarkan institutional-functional authority model yang mengintegrasikan legitimasi fikih, kompetensi administratif, kualifikasi pejabat, dokumentasi, dan kepastian hukum dalam satu struktur. Penelitian selanjutnya perlu menguji model tersebut secara empiris pada KUA berbeda untuk menilai konsistensi penerapan dan variasi interpretasi pejabat Indonesia.

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INTRODUCTION

The issue of the wali in Muslim marriage has never been solely about the presence of a man who utters the *ijab*, but is intertwined with a more fundamental question regarding who holds the authority to establish, recognise, or replace the wali when the wali nasab is unable to fulfil his function. This debate is evident across various Muslim family law systems. A comparative study of Malaysia, Morocco, Tunisia and Syria shows that the position of the guardian and the scope of women's autonomy are constructed differently according to madhhab traditions, legislative history, and the relationship between Islamic law and the state (Huda, 2004, pp. 51–61). In Southern Thailand, the settlement of marriages within the Muslim minority community relies on the Datok Imam Masjid, who is delegated authority by the provincial Islamic committee; however, in practice, this remains influenced by local fiqh authorities and the limited administrative recognition by the state (Supraptiningsih & Bariyyah, 2019). In Malaysia, the issue of marriages without authorisation demonstrates that ambiguities or deviations regarding the guardian can lead to disputes over Sharia validity as well as administrative issues; literature reviews even note that the majority of problematic syndicate marriage practices relate to guardianship and non-compliance with the procedures of religious authorities (Borhanuddin et al., 2022, pp. 273–276). This diversity is also rooted in doctrinal differences: the Hanafi tradition affords greater scope for adult women to perform the marriage contract, whilst other Sunni schools of thought place greater emphasis on the guardian as a crucial element of marriage (Nasution, 2009, p. 205). A study of the hadith chains of transmission also reveals that the argument regarding the necessity of a guardian is constructed through hadith sources with varying degrees of validity that must be read carefully, rather than assumed to be a wholly uniform construct (Sa'dan, 2023, p. 255). Consequently, the local reality regarding who acts as a judicial guardian is in fact situated within a broader global debate concerning the relationship between fiqh authority, state authority, gender, and the legalisation of marriage.

In the Indonesian context, this issue becomes more complex because fiqh norms have been codified and institutionalised through marriage law, the Compilation of Islamic Law (KHI), the Ministry of Religious Affairs, and the structure of the Office of Religious Affairs (KUA). Research into the formulation of the KHI reveals the strong influence of Shafi'i fiqh on provisions regarding the pillars and procedures of marriage, including the guardian, although its formulation does not entirely preclude the use of views from other schools of thought or the establishment of new norms adapted to the legal needs of Indonesia (Umam, 2017, p. 117). At the institutional level, the debate has become increasingly apparent as women have been incorporated into the structure of the marriage officiant profession. A study in Yogyakarta identified three attitudes towards female marriage registrars—acceptance, conditional acceptance, and rejection—and one of the main objections relates to the involvement of marriage registrars in the functions of wali hakim and taukil wali (Saputra, 2018, pp. 199–200). A maqāṣid-based study further demonstrates that the work of a penghulu cannot be reduced solely to the role of wali hakim, as they also perform administrative functions and provide legal certainty through the registration of marriages; therefore, the assessment of women as penghulu must be distinguished from the issue of the requirements for carrying out specific guardianship functions (Maliki et al., 2023, pp. 51–54). This distinction becomes particularly important when a KUA is led by a woman, as the legal questions cannot be adequately addressed merely by debating the gender of the official. Research on the penghulu as a judicial guardian indicates that the penghulu can indeed perform the functions of a judicial guardian and accept the delegation of guardianship in KUA practice, but the basis, form and procedures for such authority are not always identical (Zamani, 2019, pp. 173–180). The practice of delegating guardianship at the KUA also demonstrates that the appointment of a guardian involves specific procedures and legal consequences should the appointed person fail to meet the applicable requirements (Zahro & Rahma, 2023, pp. 355–361), whilst research in Semarang indicates that KUA officials may even differ in determining the legal basis for the delegation of guardianship when the blood-related guardian is deemed ineligible (Rokhmadi, 2016, pp. 203–204).

A more specific discrepancy emerges when studies on judicial guardians are placed side by side with the literature on the authority of the penghulu and the bureaucratisation of family law. At the KUA in Idi Rayeuk, the appointment of a judicial guardian for a girl born less than six months after her parents' marriage does not simply follow a single legal regime, but arises from a negotiation between positive law and Shafi'i fiqh (Fadli & Juliandi, 2021, pp. 268–269). An ethnographic study of penghulus and modins shows that penghulus establish their authority not only as religious figures, but as agents of the state with the capacity to grant legal recognition to marriages (Fauzi, 2019). On the other hand, research on state and non-state penghulus reveals that the validity of marriages and who is deemed authorised to perform them is an issue that is continually negotiated between state law and socio-religious authorities (Al Farabi, 2020, pp. 343–344). Historically, the authority of the penghulu has also evolved; research in Ternate and Tidore indicates a shift from relatively broad religious authority towards a role that is increasingly shaped and constrained by state regulations and administration (Abubakar et al., 2025, pp. 139–140). The fragmentation of authority between the state and religious scholars can even result in dualism and legal uncertainty, as found in the practice of marriage law in Aceh (Nasir et al., 2023, p. 369). More recent literature subsequently frames the bureaucratisation of marriage as a multi-layered configuration of authority: the penghulu holds legal-rational authority, whilst other actors continue to perform supporting functions in the administration and verification of guardianship (Nadhifah et al., 2026, pp. 32–35). Findings in Banyumas also indicate that the penghulu negotiates between fiqh, administration and state documentation when determining the validity of a guardian (Juliansyahzen et al., 2026, pp. 241–242). However, this body of research has not yet systematically examined

whether the authority of the wali hakim is formed through attribution, delegation, mandate, administrative appointment, or a combination of these mechanisms when the position of Head of the KUA and the function of penghulu are not held by the same person.

From an evaluative perspective, previous studies have provided an important foundation, but their orientation, methods and findings remain scattered across different analytical frameworks. Saputra used interview data with penghulus to map attitudes towards female penghulus and found that differences in acceptance were primarily determined by interpretations of fiqh and the functions of the wali hakim (Saputra, 2018), whilst Maliki et al. employed a literature review based on Jasser Auda's maqāṣid to emphasise the public interest in the administrative functions of religious officials and to provide a rationale for women's involvement (Maliki et al., 2023). Zamani adopted a phenomenological approach to explain the practices of wali hakim and taukil wali amongst religious officials in Yogyakarta (Zamani, 2019), whilst Juliansyahzen et al., through a socio-legal approach, found that the appointment of guardians in Banyumas takes place through negotiations between religious authorities, administrative documents and social change (Juliansyahzen et al., 2026). Normative criticism of the KHI has even prompted a reconstruction of the provisions on guardianship through the lens of gender justice; however, the primary focus remains on women's rights as guardians, rather than the structure through which the state grants judicial guardianship authority (Ashidiqie, 2021, pp. 23–24). Similarly, research on guardianship for widows employs a juridical-normative approach and the theory of legal certainty to demonstrate that the ambiguity of guardianship norms can create administrative problems and necessitate a reformulation of the rules (Suryana et al., 2025, pp. 71–72). Consequently, previous studies have explained who is deemed eligible to act as a guardian, how the head of the religious court (hulu) performs guardianship functions, and how law and fiqh are negotiated; however, they have not utilised the theory of authority as the primary framework for distinguishing between the sources of authority, office-holders, recipients of delegated authority, and the executors of the guardian's actions.

Building on these limitations, this study offers a novel approach by shifting the focus of analysis from the conventional question of whether the female gender of the head of the KUA prevents her from performing the functions of a guardian judge to a more fundamental issue concerning the legal architecture of the guardian judge's authority. This shift is significant because previous research has shown that the authority of the penghulu is shaped simultaneously by fiqh, state administration and institutional practice (Fauzi, 2019; Juliansyahzen et al., 2026), whilst the implementation of the wali hakim and the delegation of authority (taukil wali) have foundations and mechanisms that are not always the same (Zahro & Rahma, 2023; Zamani, 2019). Therefore, this study poses three questions: first, how are the sources and basis of the judicial guardian's authority constructed in Islamic jurisprudence and Indonesian marriage law? Second, how do the attribution, delegation, mandate or form of appointment, as well as the exercise of the judicial guardian's authority, function when the KUA is led by a woman? Third, how can the authority of the wali hakim be reconstructed by integrating fiqh requirements, administrative legality and legal certainty? Its novelty does not lie in adding yet another debate on whether or not women may serve as wali, but rather in the attempt to systematically distinguish between the position of Head of the KUA, the status of the penghulu, the sources of authority, the mechanisms of delegation, and the normative capacity of the wali hakim's executor. Thus, this study aims to reconstruct a model of the authority of the wali hakim within the Indonesian Islamic marriage system that is capable of reconciling fiqh legitimacy, the structure of administrative authority, and the need for legal certainty when the leadership of the KUA does not always coincide with the official performing the function of wali hakim.

RESEARCH METHOD

This study employs a normative legal research method to analyse the construction of the authority of the judge-guardian in Indonesian Islamic marriage law, particularly when the Office of Religious Affairs (KUA) is headed by a woman. The normative legal approach was chosen because the focus of the research is not directed at measuring the empirical behaviour of society, but rather at examining legal norms, the concept of authority, institutional structures, and the relationship between fiqh provisions and positive law governing the exercise of the judicial guardian's authority. Through this approach, the study examines how the authority of the judicial guardian is formed, granted, delegated, and exercised within the structure of marriage administration in Indonesia. All research data were sourced from relevant literature pertaining to the subject of study. The legal materials and literature utilised include legislation in the fields of marriage and religious administration, the Compilation of Islamic Law, regulations and policies of the Ministry of Religious Affairs' Directorate General of Religious Affairs, as well as other provisions relating to the positions of Head of the KUA, marriage officiant (penghulu), judicial guardian, and the conduct of marriages. Furthermore, the research utilised academic articles in journals, academic books, research findings, and other scholarly works discussing guardianship, judicial guardians, administrative authority, marriage officiants, women within the KUA structure, and the relationship between fiqh and national marriage law. Sources were selected based on their relevance to the three research focuses, namely the sources and basis of the guardian judge's authority, the mechanisms for the attribution and delegation of authority, and the possibility of reconstructing authority when the Head of the KUA does not simultaneously meet the normative requirements to perform the functions of a guardian judge.

Data collection was carried out using the documentation technique, which involved tracing, identifying, cataloguing, reading and classifying legal documents and academic literature directly relevant to the research issues. Documentation was used not only to compile the provisions governing the acting judge but also to compare the relationship between fiqh norms, positive law norms, the concept of authority in administrative law, and institutional practices as reflected in previous research. The data collected was subsequently analysed by adapting the data analysis stages outlined by Miles et al., comprising data condensation, data presentation, and drawing conclusions. During the data condensation stage, legal materials and literature were selected, focused and grouped according to issues of the source of authority, attribution, delegation, mandate or form of administrative appointment, fiqh requirements, and the capacity of officials acting as judicial guardians. In the data presentation stage, the classified norms and arguments were systematically organised to reveal the relationships, similarities, differences, and potential conflicts between fiqh legitimacy and the structure of administrative authority. The final stage involves drawing analytical conclusions to determine the prevailing structure of authority and to formulate a model for the delegation of authority to the wali hakim that can reconcile fiqh requirements, administrative legality, and legal certainty when the KUA is led by a woman.

RESULTS AND DISCUSSION

The Construction of the Sources and Basis of the Wali Hakim's Authority in Fiqh and Indonesian Marriage Law

In fiqh of marriage (munakahat), the authority of the marriage guardian does not stem from a single legal framework. The concept of al-wilāyah refers to the capacity to act on behalf of the interests of the party under guardianship, but its application to the marriage contract is debated amongst the schools of thought. The Shafi'i, Maliki and Hanbali schools generally regard the wali as a determining factor in the validity of the contract, whilst the Hanafi school affords greater scope

for adult women of legal capacity to enter into the contract themselves; this difference stems primarily from differing interpretations of the Qur'anic verses, hadiths, legal capacity, and the relationship between the woman's consent and the authority of the wali (Asman, 2024, pp. 31–38; Huda, 2004; Ismail et al., 2021, pp. 416–417; Nasution, 2009; Sa'dan, 2023). Consequently, the blood-related guardian derives their initial legitimacy from kinship ties recognised by Islamic jurisprudence and subject to specific conditions, rather than from state appointment. Contemporary literature demonstrates that the scope of the guardian's authority is also interpreted in terms of competence, the protection of the interests of the parties being married, and social change (Ashidiqie, 2021; Hakim, 2014, pp. 45–56; Muttaqin & Fadhilah, 2020, pp. 102–116; Zuhriyah & Muna, 2023, pp. 89–91). When the original guardian is unable to fulfil their role, the qāḍī may step in to protect the interests of the person under guardianship (Yasin et al., 2024, pp. 780–786). Thus, the wali nasab derives from lineage, whilst the wali hakim constitutes a substitute authority that operates when private guardianship mechanisms fail.

This transition marks the point at which family authority ceases and public authority begins to operate. The Malacca Act, for example, designates the judge as guardian when the wali aqrab or wali mujbir is absent or unable to perform their functions; thus, the judge's legitimacy does not stem from the continuation of the lineage but rather from a substitution based on legal authority (Yakin, 2015, pp. 17–18). This must be distinguished from 'taukil': in 'taukil', the blood-related guardian remains the source of authority and merely delegates the performance of the '*ijab*' to another party (Iftidah, 2016, pp. 87–93). Conversely, the use of a wali muhakkam or traditional leader without a basis in state authority demonstrates that social acceptance is not automatically synonymous with legal authority (Ibrahim et al., 2023, pp. 55–68; Siregar et al., 2023, pp. 41–42; Syukur, 2014, p. 1). The experience of Muslims in Southern Thailand demonstrates that marriage authority can be institutionally delegated to the Datok Imam Masjid, whilst studies of the Indigenous peoples of Perak emphasise the importance of a legitimate guardian and the endorsement of religious institutions when customary law intersects with the pillars of marriage (Shahrom et al., 2026; Supraptiningsih & Bariyyah, 2019). Therefore, the al-sulṭān, the al-qāḍī, the penghulu and the wali hakim are related in terms of their authoritative functions, but cannot be treated as identical categories.

In Indonesia, this transformation took place through the codification and bureaucratisation of marriage law. The KHI strongly incorporated Shafi'i jurisprudence by establishing the wali as an essential element and regulating the order of blood-related guardians, whilst simultaneously transforming fiqh doctrine into a norm administered by state institutions (Umam, 2017). At the practical level, the penghulu may perform the function of a judicial guardian or accept a delegation of authority from a guardian, but the two draw their authority from different sources (Zamani, 2019). Research in Semarang and Idi Rayeuk indicates that the transfer of guardianship also involves KUA officials' interpretations of fiqh, documents and positive law (Fadli & Juliandi, 2021; Rokhmadi, 2016), whilst findings in Banyumas reveal ongoing negotiations between religious authorities and state administration (Juliansyahzen et al., 2026). Historically, the penghulu shifted from being a religious figure with broad authority during the sultanate era to an official whose powers are increasingly shaped by state regulations (Abubakar et al., 2025). Within the contemporary structure, the penghulu acts as a state agent who grants legal recognition to marriages, although in the social sphere he continues to interact with non-state penghulus (Al Farabi, 2020; Fauzi, 2019). The institutionalisation of the judicial guardian, therefore, is not merely a replacement of the term 'qāḍī' with 'penghulu', but rather a transfer of public authority functions to the structure of the Ministry of Religious Affairs and the KUA.

Ministerial Regulation (PMA) No. 30 of 2024 reinforces this framework. Article 12 distinguishes between the wali nasab and the wali hakim and permits the wali nasab to delegate the performance of the *ijab* to a PPN or another qualified person; within this framework, the source of authority remains with the wali nasab. Conversely, Article 13 places the judicial guardian within the structure of state authority by stipulating that this function is carried out by the Penghulu who has been assigned the additional duty of Head of the KUA; whereas if the position of Head of the KUA is held by someone other than a Penghulu, the function of the judicial guardian is carried out by a Penghulu appointed by the Head of the Ministry of Religious Affairs Office. When viewed through the lens of the theory of authority, this framework reveals five distinct layers: the source of authority derived from state norms; the basis of legitimacy rooted in the substitutive function of public authority within Islamic jurisprudence (fiqh); the institutional bodies situated within the structure of the Ministry of Religious Affairs and the KUA; officials who derive their authority from their position or appointment; and the legal act of performing the marriage contract when the conditions for the transfer of guardianship to the judicial guardian are met. Given this framework, the authority of the judicial guardian in Indonesian marriage law cannot be reduced to merely the personal right of an individual simply because they hold the position of Head of the KUA; rather, it demonstrates the nature of a public-institutional function attached by law to the office and exercised by officials who fulfil specific normative criteria. This interpretation differs from the tendency of previous studies, which have largely focused on the validity of the guardian, the practices of the marriage officiant, or the tension between fiqh and administration in isolation, as the issue of authority here is distinguished according to its source, legitimacy, organ, official, and legal act. This distinction simultaneously leads the analysis to the next issue: when the Head of the KUA does not meet the normative personal criteria to perform the function of a guardian judge—including when the post is held by a woman—the determination of the authorised party must be traced through the mechanisms of attribution, appointment and the exercise of authority, rather than solely through the title of Head of the KUA.

Attribution, Delegation and Exercise of the Guardian Judge's Authority in a KUA Led by a Woman

The configuration of the guardian judge's authority changes significantly when the position of Head of the KUA is no longer always synonymous with the functional position of Penghulu. Ministerial Regulation (PMA) No. 30 of 2024 quite clearly distinguishes between two sources of guardianship: Article 12 places the blood-related guardian within a kinship relationship and explicitly requires them to be male, whilst Article 13 places the judicial guardian within the structure of public office. The judicial guardian is referred to as a Penghulu who has been assigned the additional duty of Head of the KUA; if the position of Head of the KUA is held by someone other than a Penghulu, the judicial guardian is a Penghulu appointed by the Head of the Ministry of Religious Affairs Office. Meanwhile, Ministerial Regulation No. 24 of 2024 opens the position of Head of the KUA to civil servants holding the functional posts of Penghulu or Islamic Religious Counsellor. This new structure renders the long-standing thesis that the Head of the KUA is by definition a judicial guardian no longer tenable. Previous literature does indeed show that the Penghulu performs the functions of a wali hakim, receives the taukil wali, verifies the validity of the wali, and mediates between fiqh law and state administration (Fadli & Juliandi, 2021; Rokhmadi, 2016; Zahro & Rahma, 2023; Zamani, 2019). However, these practices take place within a structure that often links the Head of the KUA and the penghulu. More recent studies, however, indicate that the authority over marriage operates through a differentiation of roles, administrative legality, and increasingly complex bureaucratic practices (Juliansyahzen et al., 2026). This shift is significant

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because previous debates regarding women as marriage registrars tended to conflate gender issues with the role of a guardian ad litem, whereas marriage registrars have administrative functions that extend far beyond guardianship alone (Maliki et al., 2023; Saputra, 2018).

A systematic analysis of these provisions yields four configurations with differing legal consequences. Firstly, a male Head of the KUA who holds the status of Penghulu fulfils two roles simultaneously: he is valid as Head of the KUA in administrative terms and falls directly into the category of judicial guardian under Article 13(2); in this configuration, the appointment of another Penghulu is not required and the issue of the male requirement within the fiqh framework does not arise in practice. Secondly, a male Head of the KUA who is an Islamic Religious Counsellor remains validly authorised to lead the KUA, but does not become a wali hakim because the determining factor in Article 13 is not his gender, but his status as a Penghulu. The role of wali hakim must be carried out by a Penghulu appointed by the Head of the Ministry of Religious Affairs Office. Thirdly, the same interpretation applies to a female Head of the KUA who is a Religious Counsellor: she is a legitimate Head of the KUA, but cannot act as a judicial guardian because she is not a Penghulu; thus, the reason for delegating this role to another official is her functional position, not her gender. Fourthly, the issue becomes more complex when a female Head of the KUA also holds the status of Penghulu. Textually, she fulfils the criteria of Article 13(2), as that provision does not impose a gender requirement on the wali hakim, unlike Article 12(2) which does so for the wali nasab. This differentiation of functions within the marriage bureaucracy is consistent with the finding that the Penghulu holds formal authority, even though marriage services involve various other actors (Abubakar et al., 2025; Al Farabi, 2020; Fauzi, 2019; Nadhifah et al., 2026). The complexity of KUA services itself indicates that the administrative capacity of the head of the office should not be equated simply with all the functional authorities within it (Aditya & Wardana, 2022, pp. 257–258; Fathurrahman et al., 2023, pp. 341–344; Ishom, 2019, pp. 391–397; Muhajir et al., 2024, pp. 125–126).

This distinction also serves to correct the loose use of the term 'delegation'. In the theory of authority, attribution refers to the conferral of original e authority by a norm upon a body or official; delegation presupposes a transfer of authority from the previous holder to the recipient, who then acts on the basis of their own authority; whereas a mandate merely entrusts the execution of a task, with authority and responsibility remaining with the grantor. Administrative appointment is again distinct, as it primarily determines who carries out the functions established by the norm, rather than creating or transferring that authority from the appointing official. This distinction is necessary because the term 'delegation' in marriage law literature often carries a different meaning. 'Taukil wali', for example, is the granting of authority by the blood-related guardian to a representative to perform the marriage contract; consequently, the source of guardianship remains with the blood-related guardian (Iftidah, 2016; Zahro & Rahma, 2023). Similarly, the 'delegating marriage administration' identified by Ali relates to the handover of administrative management by the prospective bride and groom to an intermediary, not the delegation of governmental authority (Ali, 2024, pp. 1–2). The experiences of Datoks in Southern Thailand and kyais in unregistered marriages also demonstrate that social or religious authority does not automatically confer state authority (Islamiyah, 2024; Supraptiningsih & Bariyyah, 2019). As Article 13(3)–(4) explicitly uses the phrase 'appointed Penghulu' and the appointment is made by the Head of the Ministry of Religious Affairs Office, this mechanism is more accurately characterised as an administrative appointment to perform the functions of a guardian judge, rather than a delegation from the Head of the KUA. Nor is it a mandate from the Head of the KUA, as the appointed Penghulu does not act on behalf of the Head of the KUA, but holds a position in their own right as a guardian judge based on the relevant provisions. The contestation between authorities found in marriage law

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further highlights the importance of determining the source of formal authority, rather than merely the social authority of the actor (Faiz et al., 2023, pp. 223–224; Nasir et al., 2023).

The fourth configuration reveals a tension that cannot be resolved simply by reading the word 'woman'. In positive law, Article 12 adopts an explicit formulation by specifying 'a man' as a requirement for a blood-related guardian, whilst Article 13 does not repeat or refer to this requirement when defining a judicial guardian. Consequently, the requirements for a wali nasab cannot simply be transferred to a wali hakim without additional interpretative grounds. From a textual-systematic perspective, a woman who lawfully holds the Functional Position of Penghulu and is assigned the additional duty of Head of the KUA fulfils the administrative category of wali hakim under Article 13(2). However, this conclusion under positive law does not automatically resolve the issue of fiqh legitimacy. Studies on the ' ' of female Penghulus have documented differing opinions, precisely because some Penghulus link the function of the judicial guardian to the requirements of a male guardian, whilst others distinguish the capacity of the Penghulu as a state official from the construct of guardianship in fiqh (Saputra, 2018). Ashidiqie highlights the strong male-centred construction within guardianship regulations influenced by Shafi'i fiqh, whilst Maliki et al. propose a maqāṣid-based interpretation that opens up access for women to the position of penghulu (Ashidiqie, 2021; Maliki et al., 2023). The literature on women's leadership also demonstrates that women's public authority constitutes a contested area of fiqh interpretation, rather than a proposition that can be resolved solely through biological identity (Muqtada et al., 2024, pp. 221–222). The reinterpretation of Islamic law developed by KUPI and female scholars increasingly emphasises women's competence, responsibility, justice and experience as part of the formation of contemporary religious authority (Agustina & Ismah, 2024; Faizah et al., 2024). The context of pluralism between fiqh, state law and women's experiences also demonstrates that a single normative source does not always operate in isolation in the formation of legal consciousness (Jumarim et al., 2024, pp. 27–28).

From this structure, it is evident that the Head of the KUA and the judicial guardian are two legal statuses that overlap but are not identical. A Head of the KUA becomes a judicial guardian not merely because they lead the KUA, but because the law requires a specific combination of the status of Head of the KUA and the functional position of Penghulu. When the Head of the KUA is an Islamic Religious Counsellor, whether male or female, the function of judicial guardian is not inherent to them and is instead carried out by a Penghulu appointed by the Head of the Ministry of Religious Affairs Office. Conversely, when the Head of the KUA is also a Penghulu, Article 13(2) directly classifies them as a wali hakim; in the case of a female Head of the KUA who holds the status of Penghulu, a new tension arises regarding the compatibility between this positive legal framework and the requirements for a wali under fiqh interpretation, rather than concerning the administrative validity of her position as Head of the KUA. Consequently, the issue of KUA offices led by women cannot simply be framed as the question of whether 'women may serve as judicial guardians', but must be analysed in terms of official status, the source of authority, the qualifications of officials, the fiqh basis, and the mechanisms for implementation. Previous studies have examined women as marriage registrars, the practice of the wali hakim, the bureaucratisation of marriage, and contests over authority, but have not yet systematically distinguished between these four positions. This analysis also demonstrates that the term 'delegation of authority' must be treated with caution: for non- -Penghulu Heads of the KUA, the wording of Article 13 suggests that the Penghulu is appointed as a wali hakim, whilst for Heads of the KUA who hold the status of Penghulu, their executive authority derives directly from the normative configuration of the office. It is this distinction that serves as the starting point for reconstructing a mechanism of

authority capable of safeguarding administrative legality, fiqh legitimacy and legal certainty simultaneously.

Reconstructing the Delegation of Authority to the Judicial Guardian: Integrating Fiqh Requirements, Administrative Legality and Legal Certainty

The reconstruction of the wali hakim's authority must begin with the issues that arise when the doctrines of fiqh, the structure of the KUA, and administrative law are interpreted as a single body of authority without distinguishing between their respective functions. Previous findings indicate that the wali hakim's authority is rooted in the substitute function of public authority when the wali nasab is unable to perform their duties; however, the state subsequently institutionalised this function through official posts and administrative procedures. Ministerial Regulation (PMA) No. 24 of 2024 opens the position of Head of the KUA to Penghulus or Islamic Religious Counsellors, whilst Article 13 of PMA No. 30 of 2024 links the wali hakim specifically to the status of Penghulu: a Penghulu who has been assigned the additional duty of Head of the KUA or, if the Head of the KUA is not a Penghulu, a Penghulu appointed by the Head of the Ministry of Religious Affairs Office. The issue is not merely one of personal suitability, but rather how fiqh legitimacy, institutional competence and administrative authorisation converge in the same individual. The plurality of authorities and the negotiation between fiqh and state law can lead to uncertainty when the boundaries of authority are not clearly defined (Faiz et al., 2023; Juliansyahzen et al., 2026; Nasir et al., 2023; Suryana et al., 2025). Discretion may help safeguard citizens' rights when legal norms are incomplete, but it cannot replace the need for a precise definition of authority (Dikuraisyin et al., 2024; Fauzi, 2023). The necessary reconstruction, therefore, is not the strengthening of a particular figure, but rather the structuring of the relationship between sources of legitimacy, officials, offices, and legal actions.

This reconstruction is based, first and foremost, on the sources of legitimacy and the substantive qualifications of those acting as wali hakim. In fiqh, the wali hakim does not derive their authority from kinship ties, but rather from a public authority that assumes the functions of guardianship when the blood-related guardian is unable to fulfil them. Consequently, a person who is respected by the community or capable of conducting a marriage contract does not, by that fact alone, possess the authority to act as a wali hakim. The practices of the wali muhakkam, the Ungku Kali, the clan guardian, and non-state marriage officiants demonstrate that social and religious legitimacy can be deeply entrenched in society, yet they are not synonymous with the competence conferred by the state (Al Farabi, 2020; Ibrahim et al., 2023; Islamiyah, 2024; Siregar et al., 2023; Syukur, 2014). At the same time, the issue of substantive qualifications cannot be reduced to a single personal criterion. The KHI does indeed draw heavily on the Shafi'i fiqh framework regarding the wali, but contemporary research highlights debates concerning competence, the public interest, and women's involvement in religious public authority (Ashidiqie, 2021; Muqtada et al., 2024; Umam, 2017; Yasin et al., 2024). Consequently, the fiqh requirements for those who actually perform the functions of a judicial guardian need to be explicitly formulated and distinguished from the requirements for a blood-related guardian, rather than being assumed through automatic extension.

The next dimension concerns institutional competence and the mechanisms for the delegation of authority. It is at this point that the shift from the 'personal authority' model towards the 'institutional-functional authority' model becomes clearer. The state has placed the function of judicial guardian within the structure of the KUA and linked its implementation to the Functional Position of Penghulu. The historical evolution of the penghulu reveals a shift from a religious figure possessing broad social authority towards an official whose functions and powers are increasingly

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determined by state regulations (Abubakar et al., 2025; Ishom, 2019). Bureaucratisation has not necessarily eliminated local actors such as the modin, but the penghulu continues to hold the ultimate formal authority in the validation and registration of marriages (Nadhifah et al., 2026). As Article 13 of PMA No. 30 of 2024 uses the term 'appointed' when the Head of the KUA is not a Penghulu, this mechanism is more accurately understood as an administrative appointment of a Penghulu who is already categorised as a competent official, rather than a delegation of authority from the Head of the KUA. This differs from the 'taukil wali', as in the 'taukil' the source of authority remains with the blood-related guardian (Zahro & Rahma, 2023; Zamani, 2019), and it also differs from the "delegation" of administrative marriage management to an intermediary as examined by Ali, because what is delegated is administrative management, not governmental authority (Ali, 2024). Thus, the terminology of "delegation" used in the article's title should be treated as a concept to be tested, not as a conclusion that must be upheld from the outset.

Legal certainty then becomes the binding element between fiqh legitimacy, institutional competence and the exercise of authority. The authority of the wali hakim must be ascertainable and demonstrable through a normative trail indicating the grounds for the transfer of guardianship, the status of the acting official, their area of competence, and the appointment document where required. This requirement is evident in the practice of the KUA (Religious Affairs Office) when officials must reconcile fiqh with positive law in determining a guardian, including in cases of 'adam wali and issues of lineage (Fadli & Juliandi, 2021; Rokhmadi, 2016). Experience in matrimonial law also demonstrates that religious validity, administrative recognition and legal force are three interrelated but not identical issues; failure to distinguish between them may affect the protection of the parties' rights (Borhanuddin et al., 2022, 2025, pp. 18–19; Jumarim et al., 2024). On this basis, the Integrated Model of the Judicial Guardian's Authority can be formulated through the following sequence: sources of legitimacy; institutions holding competence; substantive qualifications of officials; the status of the Penghulu; additional duties or administrative appointments; the exercise of the judicial guardian's functions; documentation; and legal certainty. This structure prevents two fallacies simultaneously, namely the assumption that a person who meets the fiqh requirements is automatically administratively authorised or, conversely, the assumption that administrative status in itself resolves all issues of fiqh legitimacy. Such clarity is required so that the flexibility of KUA services does not turn into uncertainty regarding who is actually authorised to perform legal acts (Muhajir et al., 2024).

The consistency of this model can be tested against four possible positional configurations within the KUA. A male KUA head who also holds the status of Penghulu is the simplest configuration, as the administrative competencies and the role of acting guardian judge are held by the same person; provided the relevant substantive requirements are met, no other official needs to be appointed. A male KUA head who is an Islamic Religious Counsellor remains valid as the administrative head, but does not fall within the category of wali hakim according to the construction of Article 13, so another Penghulu must be appointed. The same pattern applies to a female KUA head who is an Islamic Religious Counsellor: the need for appointment arises because she is not a Penghulu, not because of her gender. A more complex issue arises when a female Head of the KUA also holds the status of Penghulu. Administratively, Article 13 places her in the category of 'wali hakim'; however, the substantive legitimacy of her role must still be tested against fiqh requirements that have not been formulated as clearly as the requirements for a 'wali nasab'. The debate regarding female Penghulus indeed reveals positions ranging from acceptance, conditional acceptance, to rejection within the ' ' school of thought, primarily because the function of the Penghulu is linked to the role of 'wali hakim' (Saputra, 2018). Conversely, the maqāṣid approach emphasises that the role of the penghulu also concerns marriage administration and legal

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certainty; consequently, this position cannot be reduced to the function of guardianship alone (Maliki et al., 2023). The reinterpretation of women's authority also highlights the growing importance of women's public competence, responsibility and experience in the formation of contemporary Islamic law (Agustina & Ismah, 2024; Faizah et al., 2024). This integrated model can therefore operate across all configurations without making gender the sole determinant of authority.

From this framework, it can be proposed that the authority of the wali hakim is a public-institutional function whose implementation is realised when fiqh legitimacy, administrative legality, and legal certainty are brought together within a single, verifiable structure of authority. This reconstruction differs from studies that focus on changes to the right of compulsion, the prevention of forced marriage, or the flexibility of fiqh within specific communities, as its focus is not on revising a single doctrine of guardianship in isolation, but rather on organising the relationship between sources of authority, offices, officials, qualifications, and legal actions (Hakim, 2014; Halim et al., 2024, pp. 79–80; Shahrom et al., 2026). The regulatory implications are more specific: regulations need to clarify the distinction between a judicial guardian and a blood-related guardian; the relationship between the Head of the KUA and the Penghulu; the substantive qualifications of those acting as judicial guardians; the legal nature of the appointment mechanism; the officials authorised to issue appointments; the territorial and functional limits of authority; the form of documentation; and the arrangements where the Head of the KUA is not the Penghulu or where a woman serves concurrently as both Head of the KUA and Penghulu. Such clarification is essential because the state's formal authority must remain distinguishable from social legitimacy, so that Islamic jurisprudence, administration and community practice do not operate according to conflicting standards (Borhanuddin et al., 2022; Fauzi, 2023). This model nevertheless has its limitations as it is based on normative research: it explains the construction of authority as it ought to be, but has not yet assessed the consistency of its application across all KUA offices in Indonesia. Its novelty lies in the shift in the focus of analysis from the gender of officials to the structured relationships between sources of legitimacy, the status of the Penghulu, appointment mechanisms, fiqh requirements, administrative legality, and the demonstration of authority.

CONCLUSION.

This study demonstrates that the question of who is authorised to act as a wali hakim when a Religious Affairs Office is headed by a woman cannot be answered simply by assessing the gender of the Head of the KUA, as the authority of the wali hakim is shaped by the relationship between sources of fiqh legitimacy, official status, administrative competence, appointment mechanisms, and the legal actions undertaken. In fiqh, the wali hakim derives legitimacy as a substitute for the wali nasab when the original guardianship cannot be exercised, whilst in Indonesian positive law this function has been institutionalised through the structure of the Ministry of Religious Affairs and the KUA. Consequently, the Head of the KUA is not always synonymous with the wali hakim. A KUA Head who is a Penghulu is in a different configuration from a KUA Head who is an Islamic Religious Counsellor or holds a non-Penghulu position; in the latter configuration, the function of wali hakim must be carried out by a Penghulu appointed by the competent authority. This finding also indicates that this mechanism is more accurately understood as an administrative appointment rather than a delegation or mandate, as authority does not transfer from the Head of the KUA to the Penghulu, but rather derives from the legal norms that determine which officials may perform the function of wali hakim. When the Head of the KUA is a woman who also holds the status of Penghulu, the issue no longer lies in the administrative validity of her position, but in how the substantive fiqh requirements regarding the wali hakim are interpreted and harmonised with the

positive legal framework, which does not explicitly stipulate a gender requirement for the wali hakim. Conceptually, this study proposes a shift from the 'personal authority' model towards the 'institutional-functional authority' model; that is, the understanding that the authority of a wali hakim constitutes a legitimate public-institutional function provided that its fiqh legitimacy, administrative competence, official qualifications, appointment mechanisms, implementation, and documentation are all contained within a single, verifiable structure of authority. This model clarifies the distinctions between the wali nasab, the wali hakim, the Head of the KUA, the Penghulu, and the recipient of the wali's delegation of authority, whilst positioning legal certainty as the link between Sharia validity and administrative legality. Its doctrinal contribution lies in the need to more clearly define the relationship between the Head of the KUA and the Penghulu, the substantive qualifications of those acting as judicial guardians, the legal nature of the appointment, the officials authorised to issue it, as well as the documentation and jurisdictional boundaries, so as to prevent any blurring of the lines between administrative positions and marriage-related authority. However, this study is limited by its normative legal character and has not yet empirically tested how this configuration is applied in KUA offices with different heads' professional backgrounds and genders across various regions. Therefore, future research should conduct a comparative empirical study of the practices surrounding the appointment and implementation of judicial guardians, examine variations in interpretation among KUA officials and religious authorities, and assess whether this integrated authority model is capable of functioning consistently within the practice of marriage administration across Indonesia as a whole.

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